



VLT Facilities MBE Compliance Status Report
Prepared by the Governor's Office of Minority Affairs
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Background

Statutory Requirement:

Pursuant to the Video Lottery Terminal (“VLT”) Law passed during the 2008 legislative session, the Governor’s Office of Minority Affairs (GOMA) is required to monitor each VLT Licensee’s compliance with the Minority Business Enterprise (MBE) requirements, specifically as they relate to: a) construction to the physical VLT facility, and b) any other procurement related to the development, design, management and operation of the VLT facility.

The VLT law is found in State Government Title 9 and subtitle 1A, Annotated Code of Maryland.

Section 9-1A-10 outlines:

- MBE requirements for all VLT licensees
- Scope and timeline for GOMA’s involvement in monitoring Licensees’ compliance with MBE requirements

Licensing Process

The Maryland State Lottery Agency issued a RFP on December 19, 2008 for the purpose of approving up to five (5) Video Lottery Operation Licenses to operate gaming facilities at various authorized locations within the State of Maryland. Currently, three licenses have been issued and associated facility locations approved by the VLT Location Commission. The approved licenses/sites are as follows:

Penn Cecil Maryland Inc. (Penn)
Cecil County

Ocean Enterprises 589 LLC (Ocean)
Worcester County

PPE Casino Resorts Maryland (PPE)
Anne Arundel County (Tentative)

The two VLT sites currently under construction are the Cecil County and Worcester County locations, each having an overall MBE goal of 25% and sub goals of 10% Women and 10% African American. Both Licensees, Penn and Ocean, committed to

make a good faith effort to try to achieve the overall goal and sub-goals in accordance with the licensee's agreement with the State.

The Anne Arundel County location has not yet moved forward with development due to pending zoning issues. However, GOMA met twice with Cordish representatives, once in December and again in January, to discuss MBE requirements for the Anne Arundel County facility.

A chronology of VLT MBE-related events is included as an attachment for ease of reference. (**See Attachment #1**)

GOMA Response to Statutory Requirement

GOMA's formal VLT MBE monitoring activity began in December, 2009 with introductory meetings held at GOMA's office with representatives from Penn National Gaming ("Penn"), Ocean Enterprises 589, LLC ("Ocean") and Power Plant Entertainment Casino Resorts ("PPE"). During the meetings, GOMA staff explained the MBE monitoring/compliance process and outlined in detail the expectations and best practices regarding MBE goal achievement including MBE outreach, strategic planning, monthly payment reporting, regular review of MBE award/payment activity, MBE teaming/partnering policy, etc. A copy of the meeting agenda used for each of the licensees is attached (**See Attachment #2**).

Before issuance of the first license by the Commission, GOMA sought out and identified a funding source for purposes of hiring a management consultant to assist with the MBE monitoring function (**See Attachment #3**). GOMA issued a Request for Proposals (RFP) on January 25, 2010 and in April, 2010 entered into a contract with Laisar Management Group to provide assistance overseeing the MBE activities of each Licensee. Laisar is currently assisting with documenting all actions related to the Licensee's efforts to meet the MBE goals, including site inspections to ensure MBE utilization.

Semi-Annual Reporting to the Lottery Commission

This first report will focus on the MBE-related activities of Penn and Ocean from the time the licenses were issued in September and October of 2009. The current MBE compliance status for each licensee is presented primarily within the context of MBE awards and MBE payments; MBE awards as a percentage of total award volume, and MBE payments as a percentage of total actual expenditures.

The MBE award percentage reflects what the Licensee and the State might reasonably expect in terms of actual MBE utilization, assuming that each MBE performs the

committed work and is compensated accordingly. The verified MBE payment data is the primary indicator of the Licensee's success in meeting their MBE commitment.

Penn National Gaming

General Project Update

Penn contracted with Cianbro Corporation ("Cianbro") to act as construction manager for the Perryville VLT facility and as such, Cianbro has been and continues to be responsible for all of the construction-related bidding activity as well as general management of the construction project. Two Cianbro staff members were present at the December 10, 2009 meeting with GOMA.

Several weeks ago, Penn announced a September 30, 2010 opening date. As of June 15th, the construction phase is, according to Cianbro, 70% complete... The operations phase is now underway and is expected to result in approximately \$7.6 million in additional operations purchasing activity; \$6 million of the operating budget is already under contract to various suppliers and service providers..

Construction Bidding Phase

At the December 10th meeting, Penn presented a construction schedule and an activity summary showing that 54% of the total construction budget had already been awarded by Cianbro. The summary included the names of the contractors and the MBE commitments for each (**see Attachment #4**). At that time, Penn agreed to send similar monthly status reports to GOMA showing which packages were newly awarded, the MBE goal commitment for each package, the MBEs named to fulfill the MBE requirement, and the percentage completion for each package.

Request For Expenditure Exclusions

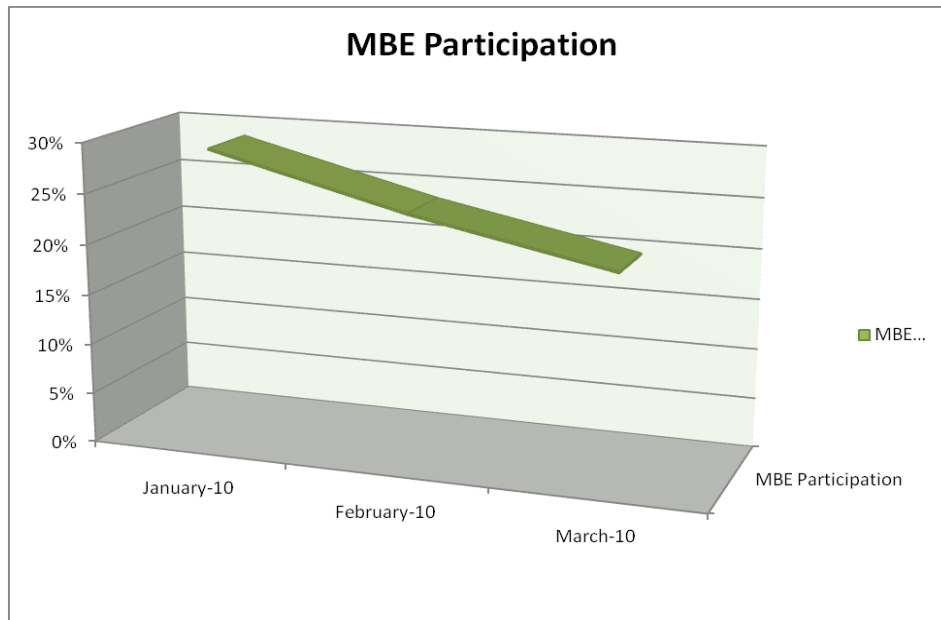
In January, 2010, Penn submitted a written request to GOMA asking that certain VLT expenditures be excluded from the total purchasing volume used to calculate their MBE utilization. GOMA's response allowed certain exclusions and denied others (**See Attachment #5 and 5A**).

Issuance Of Cure Notice

Penn's monthly MBE reports submitted for January, February, and March 2010 indicated a notable downward trend in the overall MBE contract award percentages. Over the three month period, the MBE award percentage dropped from 29% to 20%.

The precipitous drop (see chart below) prompted GOMA to issue a written cure notice to Penn on April 9th. In response to the cure notice, Penn provided a written summary on

April 22nd which included a request for a meeting with GOMA to discuss their current MBE compliance status and a remediation plan to increase MBE participation going forward (**See Attachment #6 and 6A**). Penn's April 22nd response also included a request for additional operations expenditure exemptions. GOMA denied this second exemption request on the same basis as was outlined in GOMA's previous response regarding exemptions.



The meeting requested by Penn was held on May 10th and was attended by Cianbro staff, Penn's diversity consultant, and a number of senior executives from Penn. During the meeting, Penn was reminded of certain key compliance indicators that were initially presented and discussed during the December 2009 meeting, as follows:

- Conducting sufficient MBE outreach for both large and small purchases
- Constant monitoring of overall, WBE and African American payment activity/percentages
- Making regular strategic adjustments based on actual MBE utilization
- Ensuring that the importance of Penn's MBE inclusion efforts and strategy are transferred to 2nd, 3rd tier subs responsible to Penn for fulfilling their MBE commitments
- Retaining accurate and complete documentation of MBE outreach efforts
- Ensuring all MBEs have correct payment reporting forms and are submitting reports timely

- Reminder that final MBE achievement is measured by actual payments to MBEs, not award amounts that may or may not be realized.

Penn Outreach Efforts

Outreach efforts prior to the April 9th cure notice:

- A representative from Penn and/or Cianbro attended at least one MBE outreach event held by one of the state's minority contracting/advocacy organizations during the summer of 2009.
- Cianbro utilized the MDOT MBE Directory and other industry sources for the various trades to identify potential MBE contractors.
- Cianbro implemented MBE sourcing strategies at the very beginning of the project by connecting to over 30 MBEs via direct contact, interviews and trade association networks.
- Penn contracted with a diversity supplier consultant to support MBE outreach efforts.

Outreach efforts after the May 10th meeting with GOMA:

Since the May 10th meeting, Penn has taken the following steps:

- Requested weekly meetings with GOMA staff and management consultant to discuss efforts to date and request assistance as needed.
- Designated a Penn associate as its "expert" on the MDOT MBE directory to identify qualified companies that could potentially be awarded contracts. The associate is documenting Penn's daily efforts to increase MBE participation.
- Sent a mass e-mail to certified MBE firms asking that they register on the Penn National Gaming vendor website. Approximately 56 companies took advantage of the email to register.
- Scheduled and conducted a MBE/WBE Supplier Diversity event on June 23rd at Perryville site. Penn utilized a "match making" approach where each vendor applicant was interviewed by appropriate purchasing representatives and granted 15 minutes to present their company's capabilities. Thirty seven (37) vendors confirmed attendance and thirty four (34) actually participated in the interview/matchmaking event. GOMA and Laisar staff also attended the event.

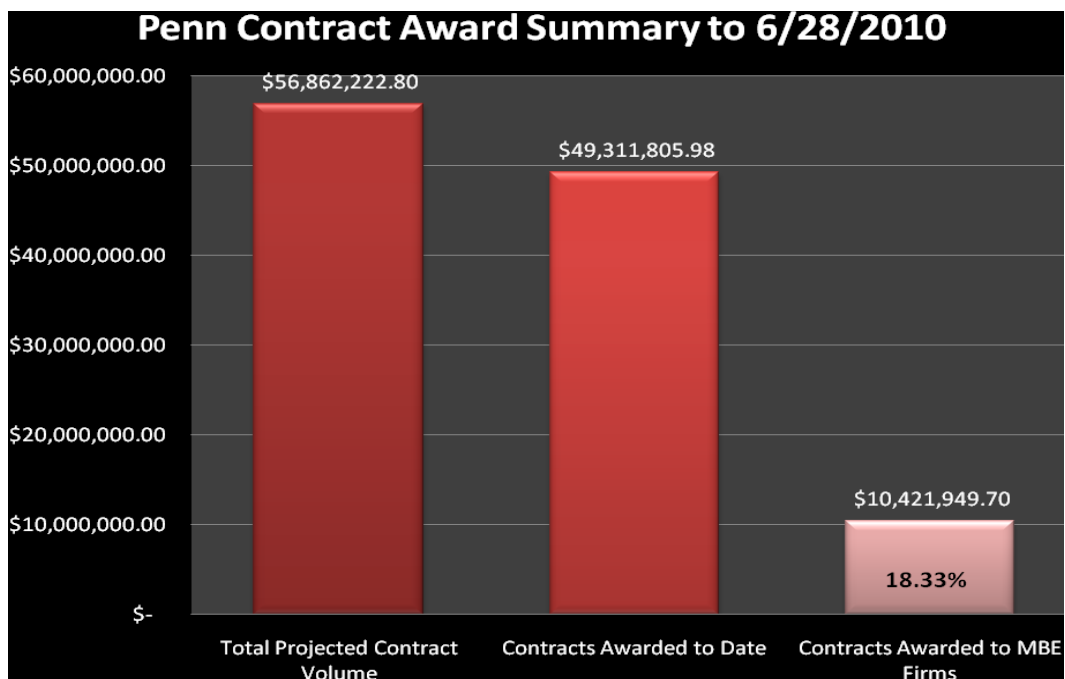
MBE Contract Award Activity

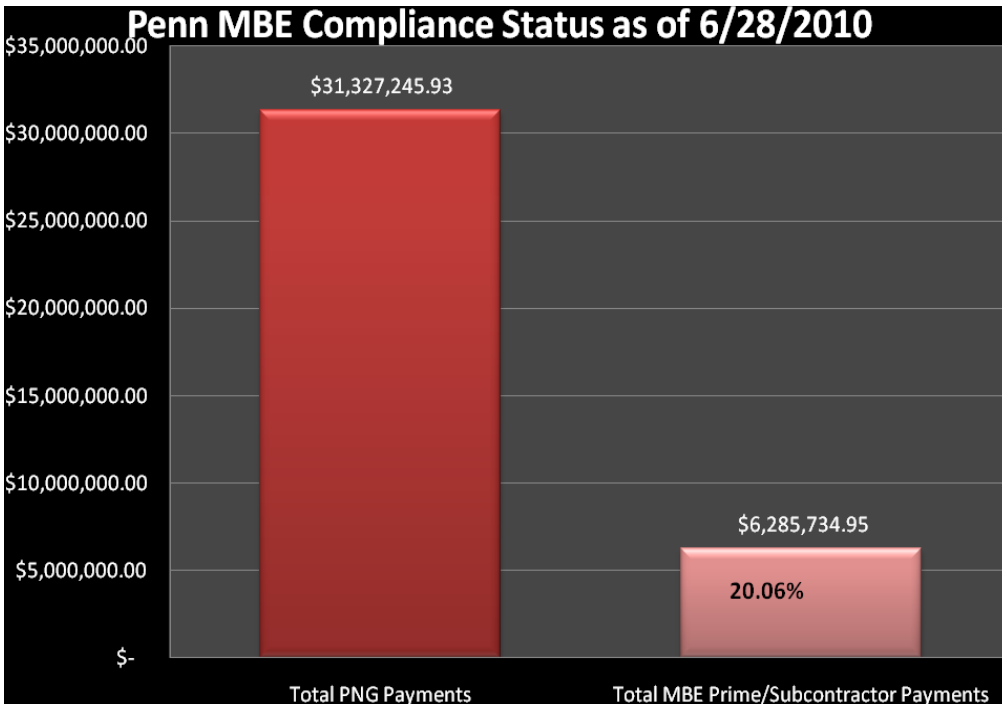
With the Cecil County VLT project being roughly 70% complete, Penn has awarded approximately \$49.3 million of their projected \$56.8 million in contracting volume or 87% of the total projected award volume. According to the latest report from Penn, the remaining budget will be used to make purchases in support of facility operations.

The \$57 million budget equates to an overall MBE award target of a minimum of \$14.2 million to meet the 25% MBE goal, with \$5.7 million going to certified women owned businesses, \$5.7 million to certified african american owned businesses, and the remaining \$2.8 million to any other certified minority business. Through June, data provided by Penn shows that 18.3% of the total contracts awarded through June have been awarded to MDOT certified MBEs. In order to meet the overall 25% MBE goal, Penn will need to award approximately 50% of the remaining \$7.5 million to MBEs.

Actual MBE Goal Achievement

Penn reports that of the \$49.2 million awarded through June, only \$31.3 million has actually been paid out. (**See Attachment #7**). MBEs have received \$6,285,735 or 20.06% of the actual payments. The MBE payment figure is documented by signed payment reports from MBEs used by Penn, verifying the amounts paid to each. The actual total MBE award activity, and the actual total MBE payments through June are highlighted in the charts below.





Penn's female and african american sub-goal targets of 10% each have not yet been reached. Female awards currently stand at 8.6%, with actual payments at 4.12%. African American awards are currently at 6.9% with actual payments at 4.6%. GOMA has continued to stress to the Penn management team that their MBE compliance status will ultimately be measured by actual MBE payments as a percentage of total payments, with MBE awards being used as a means to monitor or project the final numerical MBE achievement.

Reporting

Since December, 2009, Penn has filed monthly MBE summary reports primarily based on construction award data, but as of the May 10th meeting, GOMA asked Penn to focus their attention on payment data and percentages, as all of the major construction awards were completed at that point. 17 of 18 certified MBEs working on the project are submitting monthly payment confirmations directly to GOMA as required. Those firms not yet submitting reports have been contacted directly by the consultant to remind them of the need to comply with the reporting process. Cianbro has now taken the added step of withholding payment to certain vendors until the monthly payment forms have been timely submitted by all MBEs.

MBE Activity To Date: GOMA Observations

- 1) Penn has awarded \$16,361,463 to Maryland based businesses, \$10.4 million of which has gone to certified MBEs.
- 2) Penn has so far awarded \$98,111 to businesses that are minority owned, but are not certified through MDOT.
- 3) No complaints have been received from MBEs utilized by Penn or Penn's subcontractors regarding late payment, underutilization or unfair treatment.
- 4) GOMA has experienced difficulty obtaining necessary MBE documentation in a timely fashion from Penn management and Cianbro; some requests remain outstanding. All documentation requested is related to Penn's MBE outreach, award, and payment activity.
- 5) Face to face, phone and e-mail communications with Penn management staff indicate the absence of a clear strategy for achieving the overall MBE goal and sub-goals across all of the project phases, i.e., development, design, construction and operations. The need for such a strategy was emphasized by GOMA at the December 10th meeting.
- 6) With regard to Penn's operations contracting activity, their April 22nd letter projected \$1 million in MBE awards/payments associated with their operations purchasing (furniture, fixtures and equipment). As stated above, Penn has already awarded approximately \$6 million on the operations side, with \$66,000 awarded to MBEs or 1% of the current award volume. It is unclear whether the MBE connections made as a result of the operations-focused MBE outreach event held on June 23rd will result in enough MBE awards to fulfill Penn's MBE projection for operations. GOMA is attempting to closely monitor these final awards to ensure maximum MBE participation.

- 7) Prior to the May 10th meeting, Penn did not seek assistance from GOMA regarding identification of potential MBEs for various work areas, despite repeated offers from GOMA between December and April, 2010. GOMA requested the operations purchasing list from Penn at the December 10th meeting, with several reminders thereafter, but were not provided with the list until April 22nd as part of Penn's response to GOMA's cure notice. MBE strategic planning and outreach for the operations purchasing phase could and should have been executed much sooner than the May/June timeframe.
- 8) GOMA's analysis of Penn's existing and future contractual commitments gives little indication that the 25% overall goal or 10% sub-goals will be achieved.
- 9) So far, one factor in the less than optimal MBE participation is the apparent failure of Penn to ensure that MBE commitments made by Cianbro and other second tier construction trade contractors at the time of contract award were fulfilled.

Ocean Enterprises 589, LLC

General Project Update

In September, 2009, the State issued the first VLT license to Ocean Enterprise 589 LLC to operate a VLT facility at the Ocean Downs horse racetrack in Worcester County. The license authorizes a maximum 800 VLT machines, although Ocean management has indicated that they intend to open the facility with 600 machines operating, and then phasing in the remaining 200 machines when appropriate.

The facility was initially expected to open around the Memorial Day weekend. However, during the initial construction/renovation of the grandstand area, two issues, asbestos and severely corroded steel beams, were discovered. The resulting additional remediation and reinforcement work has taken several months, but the work is now complete and Ocean anticipates a late December opening.

Ocean contracted with Royal Plus, Inc. to act as construction manager for the project. As such, Royal Plus is overseeing the bidding process for all of the construction trade packages, and has a staff person designated to conduct MBE outreach to ensure that MBEs are given an opportunity to compete for work under the project.

GOMA initially met with Royal Plus's MBE representative on December 16, 2009 to discuss the same MBE-related topics covered with Penn, and other issues related specifically to the Worcester County facility.

Construction Contracting

To date, contracting activity for the Ocean facility has mostly been related to the asbestos remediation and steel beam reinforcement/replacement. The contracts for structural steel, steel demolition / lead abatement, membrane roofing, metal roofing and light gauge truss were awarded to Crystal Steel Fabricators, an asian-owned MDOT certified MBE.

On April 8th, GOMA requested an MBE status update from Royal Plus, as no updates had been received since January 29th. A response was received on April 13th and on May 25th GOMA met again with Royal Plus to discuss pending construction bidding activity and to reiterate the importance of providing regular updates, keeping detailed records of MBE outreach efforts, etc.

On June 11th, Royal Plus received bids on eight (8) trade packages as follows:

Building Concrete, Masonry, General Trades/Carpentry, Glass & Glazing, Drywall and Ceilings, Fire Protection, Mechanical/Plumbing, and Electrical. Royal Plus indicates that they have only one other solicitation to issue that will encompass the remaining construction trade packages.

At the May 25th meeting with Royal Plus, GOMA asked Royal Plus to forward copies of the bid responses and award determinations to Laisar. To date, Royal Plus has not provided the requested documents. A second request has been forwarded to Ocean management staff to expedite the transfer of bid/MBE documentation from the June 11th bids to GOMA. At the meeting, a request was made for the operations budget/purchasing schedule, but Ocean management indicated that the operations budget has not yet been completed.

GOMA and Laisar staff conducted a site visit to the Ocean facility on June 15th. Prior to the site tour, GOMA met with Royal Plus staff and a representative from Ocean. During the meeting, GOMA reiterated all of the key steps and actions needing to be taken by Ocean to meet the state's expectations regarding MBE outreach and utilization. Ocean was also reminded that all expenditures related to design, development, construction and operations will be included in the MBE compliance calculations, regardless of the entity that performs the work falling under these categories.

MBE Goal Achievement; Overall Goals and Subgoals

Total Project Payments:	\$4,898,484.00
MBE Contractor/Subcontractor Payments:	\$2,023,074.00
MBE Goal Achievement (as of 6/30/10)	41.3%

Outreach Efforts

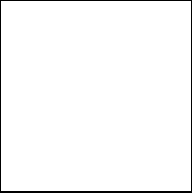
- i. Assigned a representative of Royal Plus as MBE consultant
- ii. Inclusion of MBE goals, submission requirements, etc., in all bid documents and a requirement that all bidders provide the names of MBE subcontractors that will be utilized on the contract.
- iii. Utilization of MDOT database to identify potential MBEs and customized individual contact with each vendor to convey Ocean's intent to locate qualified MBEs and generate interest in bidding on specific opportunities.
- iv. Attendance at multiple trade networking events.
- v. Strategic advertising placement to generate interest in solicitation of upcoming bids.

MBE Activity To Date: GOMA Observations

- 1) It appears from the documentation submitted so far that Ocean, through Royal Plus, is utilizing multiple outreach strategies to identify qualified MBEs to potentially participate in the construction and operations phase of the project.
- 2) There have been a few delayed responses to requests for information regarding bidding activity, outreach efforts, MBE payments, etc.
- 3) Due to the scope and timeline for the remaining contracting activity, Ocean will need to closely monitor both MBE award and MBE payment activity to ensure maximum MBE participation.
- 4) GOMA will likely provide the Commission with a brief interim MBE status update on the Ocean facility sometime in October.

Summary

It is clear from the first several months of monitoring VLT licensees' compliance with MBE requirements that the MBE monitoring activity must begin as early in the process as possible, preferably before any purchasing/contracting activity has begun. From the discussions at the December, 2009 meetings, the three current licensees did not appear to have prior practical knowledge of the State's MBE program. This fact, combined with the aggressive timelines associated with getting these facilities up and running, makes it even more challenging to achieve the desired MBE outcome. Ideally, licensees, their construction managers, and all other staff involved in the purchasing function should have a clear understanding of MBE policies and procedures before any purchasing activity begins. To that end, GOMA will work more closely with the Lottery Location



Commission to facilitate a more timely and effective means for orienting licensees to the State's MBE compliance process.